

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOCHEM SAUER

Appeal No. 97-2821
Application 08/377,720¹

ON BRIEF

Before CALVERT, COHEN, and McQUADE, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

This appeal is from the final rejection of claims 1 through 13, all of the claims pending in the

¹ Application for patent filed January 24, 1995.

application.

The invention relates to dispensing gun structure which is designed to facilitate the handling of "sausage pack" component packages. A copy of the appealed claims appears in the appendix to the appellant's brief (Paper No. 13).

The references relied upon by the examiner as evidence of anticipation and obviousness are:

Yoon	3,946,908	Mar. 30, 1976
Pedersen et al. (Pedersen)	4,072,250	Feb. 7, 1978
Giannuzzi	5,161,715	Nov. 10, 1992
Herold et al. (Herold) ² European Patent Document	541,972	May 19, 1993

The appealed claims stand rejected as follows:

a) claims 1, 4, 6, 8 through 10, 12 and 13 under 35 U.S.C. § 102(b) as being anticipated by Herold;

b) claims 2 and 3 under 35 U.S.C. § 103 as being unpatentable over Herold in view of Giannuzzi;

c) claim 5 under 35 U.S.C. § 103 as being unpatentable over Herold in view of Pedersen; and

² Our understanding of the German language Herold reference is based on U.S. Patent No. 5,332,122, its English language equivalent. The U.S. patent is of record in the instant application and is prior art with respect to the subject matter on appeal in its own right.

d) claims 7 and 11 under 35 U.S.C. § 103 as being unpatentable over Herold in view of Yoon.

Reference is made to the appellant's brief (Paper No. 13) and to the examiner's answer (Paper No. 14) for the respective positions of the appellant and the examiner with regard to the merits of these rejections.

Turning first to the standing 35 U.S.C. § 102(b) rejection of claims 1, 4, 6, 8 through 10, 12 and 13, it is well settled that anticipation is established when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or fully met by the reference. Kalman v. Kimberly Clark Corp., 713 F.2d 760, 771, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

Herold discloses a two-component dispensing gun which includes a housing 41 embodying two cylindrical chambers or barrels 47, 48, a sausage pack film tube 11 filled with a component disposed in each of the barrels, a cap 43 mounted at the discharge end of the barrel housing and having outlet passages 44, 45 in communication with the respective barrels, a nozzle 50 mounted on the cap by a bayonet connection 51, 46 for receiving the components discharged through the cap, a piston 42 mounted within each barrel for forcing the components from the barrels through the cap and into the

mixing nozzle, and a U-shaped piston rod 62 for actuating the pistons.

With regard to the 35 U.S.C. § 102 rejection of independent claim 1, the appellant contends that Herold “neither discloses nor suggests a disposable manifold unit adapted to receive and retain expended sausage packages” (brief, page 5). As correctly pointed out by the examiner, however, claim 1 reads on the combination of Herold’s double barrel housing 41 and cap 43 (see pages 3 and 5 in the answer). More specifically, these two elements define a housing having two parallel cylinders (Herold’s chambers or barrels 47, 48 and the extensions thereof in the cap 43), each having an open end and a closed end (Herold’s chambers are open at one end to receive the pistons 42 and closed at the other end by the end wall of the cap 43), with each closed end having a passage therethrough (Herold’s passages 44, 45), and fixing means on the outer side of the closed ends for affixing a mixing nozzle thereto (Herold’s nozzle fixing means 46), wherein each cylinder is of such length and diameter to receive and retain a discharged sausage pack (Herold’s Figure 4 shows chambers 47, 48 receiving and retaining the sausage packs 11). Although Herold may not expressly disclose the housing 41 and cap 43 to be disposable, it is not apparent, nor has the appellant explained, why these elements are not inherently disposable.

Moreover, claim 1 is so broad that it also reads on Herold’s cap 43 alone. Here again, it is not apparent, nor has the appellant explained, why the cap is not inherently disposable or why the cylinders defined thereby are not of such length and diameter that they are inherently capable of receiving and

retaining discharged sausages.

Thus, to the extent that it has been argued by the appellant, we shall sustain the standing 35 U.S.C. § 102(b) rejection of claim 1 as being anticipated by Herold.

We also shall sustain the standing 35 U.S.C. § 102(b) rejection of dependent claims 4, 6 and 8 as being anticipated by Herold since the appellant has not argued such with any reasonable specificity, thereby allowing these claims to fall with independent claim 1 (see In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987)).

As for the standing 35 U.S.C. § 102 (b) rejection of claims 9, 10, 12 and 13, the appellant's sole arguments are that the examiner has not identified the elements disclosed by Herold that allegedly correspond to the claimed conversion kit and, with specific regard to claim 12, that the examiner has failed to identify in Herold a disposable manifold unit (see pages 5 and 6 in the brief). The examiner, however, has in fact identified the elements disclosed by Herold which are considered to correspond to the claimed conversion kit (see pages 3 and 5 in the answer). Moreover, the disposable manifold unit limitations in claim 12 are virtually identical to those recited in claim 1 and are met by Herold for the same reasons.

Accordingly and to the extent that it has been argued by the appellant, we shall sustain the standing 35 U.S.C. § 102(b) rejection of claims 9, 10, 12 and 13 as being anticipated by Herold.

Finally, we shall sustain the standing 35 U.S.C. § 103 rejections of dependent claims 2, 3, 5, 7

Appeal No. 97-2821
Application 08/377,720

and 11 since the appellant has not argued such with any reasonable specificity, thereby allowing these claims to fall with their respective independent claims (see In re Nielson, *supra*).

The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR 1.136(a).

AFFIRMED

IAN A. CALVERT)	
Administrative Patent Judge)	
)	
)	
)	
IRWIN CHARLES COHEN)	BOARD OF PATENT
Administrative Patent Judge))	APPEALS AND
)	INTERFERENCES
)	
JOHN P. McQUADE)	
Administrative Patent Judge)	

Appeal No. 97-2821
Application 08/377,720

MICHAEL W. GLYNN
PATENT DEPT.
CIBA-GEIGY CORP.
520 WHITE PLAINS RD.
P.O. BOX 2005
TARRYTOWN, N.Y. 10591-9005